



THE IMPACT OF THE USE OF OUTSOURCED LABOR ON THE WELFARE OF WORKERS IN INDONESIA

Shafira Nurulita Aini
Universitas Negeri Semarang
e-mail: Shafiranurul2020@gmail.com

ABSTRAK

Penulisan jurnal “Dampak Penggunaan Tenaga Kerja *Outsourcing* Terhadap Kesejahteraan Pekerja di Indonesia” ini bertujuan untuk mengetahui dampak mengenai penggunaan tenaga kerja *outsourcing* di Indonesia, penggunaan tenaga kerja *outsourcing* dapat memberikan dampak baik itu positif maupun negatif, tetapi banyak hak dari para pekerja *outsourcing* yang tidak terpenuhi dan hal itu menyebabkan kesejahteraan pekerja yang tidak terimplementasikan dengan benar, oleh karena itu diperlukan tindakan untuk melindungi kesejahteraan pekerja *outsourcing*.

Kata kunci: Dampak, *Outsourcing*, Kesejahteraan

ABSTRACT

The writing of the journal "The Impact of the Use of Outsourced Labor on the Welfare of Workers in Indonesia" aims to find out the impact of the use of outsourced labor in Indonesia, the use of outsourced labor can have an impact both positively and negatively, but many rights and rights of outsourced workers are not fulfilled and it causes worker welfare that is not implemented properly. Therefore, action is needed to protect the welfare of outsourcing workers.

Keywords: Impact, Outsourcing, Welfare

INTRODUCTION

The existence of Indonesia participating in the Asean Economic Community in 2015 has an impact on increasing competition in various industrial sectors both domestically and abroad. The existence of this increasingly fierce competition requires companies to be able to create the best products and at affordable prices. Given the increasing number of expenses incurred by companies to carry out their business activities, therefore most companies are forced to make savings by means of production cost efficiency, and in order to reduce production costs, one way is to use outsourced labor. Outsourcing is a business practice in which a company hires a third party to perform tasks, provide services, or produce goods, the work that is transferred through outsourcing is usually not directly related to the company's core business, while according to labor law in article 64 of Law No. 13 of 2003 in Indonesia outsourcing is defined as contracting work and providing labor services, In addition, outsourcing is also known as a manifestation of the flexible labor market policy that was requested of the Indonesian government by the International Monetary Fund, the World Bank, and the International Labor Organization as a condition

for providing assistance for the economic crisis in 1997, the agreement with the IMF then became the basic reference for the preparation of a series of policies and regulations to improve the investment climate and labor flexibility. In addition, to obtain employees who have a quality performance, of course, it also requires the training and empowerment of employees, because the existence of job training that is in accordance with the work and profession that is being carried out is one of the expectations desired by employees, of course if employees who have good performance will want facilities that support the welfare of employees, although outsourcing is a work system that is considered detrimental to workers for employers, because outsourcing agreements are unbalanced agreements, even so, some people also consider that outsourcing is a useful thing, for example, outsourcing can increase company productivity and can result in increased profits as well.

Even today, large companies that are either national private companies or state-owned companies (BUMN) and also government agencies that are motivated by the company's strategy to make production costs efficient have also used the outsourcing system, this is because it reduces expenses because the salaries of contract workers are not as large as those of permanent workers, where sometimes contract workers are even given the same workload as permanent workers. Outsourced workers have an important role in supporting the activities of the company, therefore it is necessary to review the provision of welfare by both the user company and the service provider company, even so on the other hand outsourced workers are weak parties so that workers do not obtain their rights in accordance with those in the work contract starting from salary, bonuses, social security, length of service, and also severance pay.

RESEARCH METHODS

The research method used is normative research method, normative research method is an approach in research that focuses on analyzing the norms that regulate behavior in society, especially in the context of law, in this research method also examines and evaluates the norms of legal norms that apply with the aim of being able to understand the underlying principles, This method has a big role in legal development because from this research it can produce an understanding that is based on the philosophical, moral, and also social basis of a law or policy, therefore this method is very helpful in the process of formulating appropriate and effective interpretations of existing legal norms, in this research method also has stages that include problem identification, normative analysis, legal data collection, making conclusions, and also evaluating research results. In conclusion, normative research is legal research that places the law as a building system of norms, the system of norms built is about the principles, norms, rules of legislation, court decisions, agreements, and doctrine.

RESULTS AND DISCUSSION

What is Outsourcing

An outsourced worker is any person who works for a company that provides outsourced labor by receiving wages or compensation which is then transferred by the company providing the outsourced labor to a work company with a written agreement. Law No. 13/2003 on Labor states that a work agreement is made between an employer and a worker, whereby the company can hand over part of the work to another company through a work contractor agreement that is made in writing. In Article 1601 b of the Criminal Code, outsourcing is equated with a contracting agreement so that the definition of outsourcing is an agreement whereby the contractor binds himself to make certain work for

another party who contracts the work to the contractor for a certain fee. Meanwhile, an outsourced worker is any person who works for a company that provides outsourced labor by receiving a wage or reward which is then transferred by the company that provides the outsourced labor to a work company with a written agreement. This is also stated in Article 1 paragraph (2) of Decree of the Minister of Manpower and Transmigration No. KEP.220/MEN/2007 concerning Conditions for the Submission of Part of the Implementation of Work to Another Company, which defines a worker/laborer as every person who works for a company that receives a contract for work by receiving wages or compensation in another form. In its implementation, outsourcing involves three parties, namely companies that provide outsourced labor (vendors), companies that use outsourced labor (users), and the outsourced workers themselves. In carrying out outsourcing activities, a clear regulation is needed so that the parties involved will not be harmed, especially the outsourced workers themselves. Outsourcing in its implementation is adjusted to Article 64 of Law No. 13 of 2003 concerning Manpower, which states that a company can hand over part of the implementation of work to another company through a work contract or the provision of worker/labor services made in writing. Outsourcing can be carried out if an agreement has been signed between the user of labor services and the provider of labor services through a work contracting agreement or the provision of labor in the form of a Cooperation Agreement (PKS) and this is also the basis for outsourcing. Companies that will act as outsourcing providers must fulfill various requirements in accordance with Law Number 13 of 2003, namely:

1. In the form of a legal entity (Article 65 paragraph (3))
2. Able to provide employment protection and working conditions that are at least the same as those of the employing company or in accordance with applicable laws and regulations (Article 65 paragraph (4))
3. There is a working relationship between the worker/laborer and the company providing the worker/labor service (Article 66 paragraph (2))
4. Protection of wages and welfare, working conditions and disputes that arise are the responsibility of companies providing worker/labor services (Article 66 paragraph (2)).

To be the rights and obligations of workers and employers, there must be a legal relationship between the two. This working relationship is agreed upon by both parties with a work agreement. The work agreement will become the legal basis of the working relationship between employers and workers, because in it the rights and obligations between the two parties have been agreed upon, and to ensure certainty it is set out in written form. Outsourced workers are also protected by work protection that is contained in Law Number 13 of 2003 on Labor and applies not only to outsourced workers, but also to permanent or contract workers.

Rights of Outsourced Workers

The rights (and obligations) of outsourced workers can be explained as follows:

1. The right to “overtime pay” on weekly rest days and “holidays” for outsourced workers, first I need to explain a few (related) things, that based on Article 79 paragraph (1) jo paragraph (2) letter b of the Labor Law, employers are obliged to provide weekly rest time (weekly rest) to workers/laborers, respectively:
 - a. 1 (one) day for a 6:1 working time pattern, meaning six working days and one day of weekly rest

- b. 2 (two) days for a 5:2 working time pattern, meaning five days of work and two days of weekly rest

Referring to the provisions of Article 79 paragraph (2) letter b jo 77 paragraph (2) and Article 78 paragraph (2) of the Labor Law, the definition of a weekly rest day here, does not and does not mean that it must be Sunday, or Saturday and Sunday. Therefore, the statement “working on Sunday” may mean working on the weekly rest day. If so, the weekly rest day does not have to be Sunday or Saturday-Sunday, but can be set on any day and any day, so, if the worker/laborer is ordered (and agreed) to work on Sunday, it does not necessarily have to be paid overtime pay (UKL), unless the Sunday happens to be a weekly rest day for him/her and the worker/laborer concerned is employed on the weekly rest day, then in that case his/her overtime pay (UKL) must be calculated. The case is different with official holidays (which you call “big days”). According to Article 85 paragraphs (1) to (3) of the Labor Law, workers/laborers are not obliged to work on official holidays. However (there are exceptions), employers may employ workers/laborers to work on official holidays if the type and nature of the work must be carried out or carried out continuously, or in other circumstances based on an agreement between workers/laborers and employers. Consequently, employers who employ workers/laborers on official holidays, including for the job of “security guard”, are obliged to pay overtime wages (UKL).

2. The rights and obligations of workers in the signing of a “work contract” (my assumption is that it means PKWT) that violates the “rules of the labor service” (maybe it means labor laws and regulations), based on Article 59 paragraph (1) of the Manpower Law, that work agreements for a certain time (PKWT) can only be agreed for certain jobs which according to the type and nature or work activities will be completed within a certain time (so temporary in nature). Thus, if you sign a work contract (PKWT) and violate the provisions of Article 59 paragraph (1) and paragraph (2) of the Manpower Law, namely certain work that can be made (agreed) through PKWT, then according to Article 59 paragraph (7) of the Manpower Law, - in this case violating the provisions regarding the type and nature or certain work activities (which can be made PKWT) -, then by law - change - to PKWTT (permanent). Thus, if you have been employed (and placed) in a state-owned company (as a user) for more than 10 years -first-, then -if you meet the conditions of the employment relationship-, (you can) be considered an indefinite term employment agreement (PKWTT) in the first vendor/service provider company, and -of course- should be entitled to “severance pay” when the employment relationship ends.
3. With regard to the rights of outsourced workers (who are in fact non-organic), in general their rights are the same as those of organic workers in the user company. The rights of workers (including workers/laborers in employment relationships) that are regulated and outlined in the Law on Manpower are relatively numerous. It can be exemplified (direct rights) in order, among others, for example:
 - a. The right of non-discrimination to obtain employment. In the sense that workers/laborers should not be differentiated in the recruitment process (especially in employment relations) on the basis of ethnicity, religion, race, or ethnicity, and reject those who are different (Article 5 of the Manpower Law).
 - b. The right to receive equal treatment and rights in the workplace -without discrimination- (Article 6 in conjunction with Article 65 paragraph [4] and Article 66 paragraph [2] letter c of the Labor Law and its explanation)

- c. Obtaining improvement and development as well as recognition of work competence (Article 11 and Article 18 jo Article 23 of the Manpower Law)
 - d. Obtaining equal opportunities in choosing/getting a job, moving to work and obtaining a decent income at home or abroad (Article 31 jo Article 88 of the Labor Law)
 - e. Receive wages and/or overtime pay if employed beyond normal working hours, or work overtime on weekly rest days or official holidays (Article 1 point 30 and Article 78 paragraph [2] jo Article 77 paragraph [2] of the Labor Law).
 - f. The right to worship (including worship for a long period of time) with the right to wages (Article 81 jo Article 84 of the Labor Law)
 - g. The right not to work during (sick) menstruation -especially for women-, although no work no pay (Article 81 of the Labor Law)
 - h. Maternity and paternity leave (including maternity leave) with pay entitlement (Article 82 jo Article 84 of the Labor Law)
 - i. The right and protection of occupational safety and health (K3), protection of morals and decency and treatment in accordance with human dignity and religious values (Article 86 paragraph [1] of the Manpower Law in conjunction with Article 3 paragraph [1] of Law No. 1 of 1970 concerning Occupational Safety and Health).
 - j. Labor social security rights (Article 99 paragraph [1] of the Manpower Law jo Article 3 paragraph [2] jo Article 6 of Law No. 3 of 1992 concerning Labor Social Security)
 - k. The right to form and become a member of a trade union in accordance with the provisions (Article 104 of the Manpower Law in conjunction with Article 5 of Law No. 21/2000 concerning Trade Unions/Labor Unions).
 - l. Right to strike in accordance with procedures (Article 137 and Article 138 of the Labor Law)
 - m. The right to receive “severance pay” if the employment relationship is PKWTT or is deemed - and qualified - PKWTT (Article 156 paragraph [1] of the Labor Law)
4. Regarding the right to legal aid for workers, it should be understood that currently there is Law No. 16/2011 on Legal Aid (“Bankum Law”) which guarantees constitutional rights to every person to obtain recognition, guarantees, protection and fair legal certainty. With the Bankum Law, the state (RI) is responsible for providing legal aid for poor people facing legal problems to gain access to justice. Legal aid to the community (poor people or groups of poor people) as recipients of legal aid is organized by the Minister of Law and Human Rights (Menkum HAM) which is operationally carried out by Legal Aid Providers, namely legal aid institutions (LBH) or community organizations that provide legal aid services (BH Services) free of charge, with conditions:
- a. Submit a written application (except for those who are unable to prepare a written application)
 - b. Submit documents related to the subject matter of the case
 - c. Attach a certificate of poverty (Article 14 paragraph (1) of the Bankum Law)

The Impact of Outsourcing on Workers' Welfare

The impact that can be given from the implementation of an outsourcing system can have both positive and negative impacts such as:

1. Positive Impacts
 - a. Increased employment opportunities for the community, because outsourcing can provide more jobs, especially in sectors such as customer service, cleaning, security, and logistics, with the implementation of this outsourcing system companies can also be more flexible in adjusting the number of workers needed.
 - b. Provide job opportunities for people who have good skills and performance, even though they do not have a high enough formal education.
 - c. Make the company's operational costs lower, because most companies do apply an outsourcing system as a solution to reduce operational costs, because the salaries received from outsourced workers themselves are not as much as permanent workers.
2. Negative Impacts
 - a. There is uncertainty about work and job security, this is because outsourced workers are not permanent employees who have permanent status in the company, so outsourced workers are of course vulnerable to being terminated at any time without getting severance pay from the company.
 - b. Unstable working conditions, often outsourced workers experience the same workload as permanent employees, even though they do not get the same rights as permanent workers, for example in terms of health insurance, benefits, or leave, of course this can reduce the welfare of outsourced workers.
 - c. Lower wages, because the wages received by outsourced workers are lower than those of permanent employees, even though outsourced workers experience the same workload as permanent employees, which is beneficial for the company but very disadvantageous for outsourced workers.
 - d. Lack of training and career development, because outsourced workers usually do not have a high level of education, plus outsourced workers also do not get the same opportunities as permanent workers, which can certainly lead to a lack of opportunities for career advancement for outsourced workers.
 - e. Outsourced workers sometimes do not get the fulfillment of rights that should be due to them, such as holiday allowances, social security, and pensions. Although there are regulations that have governed this matter, in fact there are still many that do not provide these rights and are detrimental to the welfare of workers.

CONCLUSIONS AND SUGGESTIONS

Outsourcing is something that can have both a negative and positive impact, but outsourced workers often do not get their rights, where these rights also have laws that regulate them, but in reality there are still many outsourced workers who do not get their rights in accordance with what has been regulated in the legislation so that this can cause the welfare of workers not to be implemented, therefore it is necessary to increase legal protection, empower workers, and also improve the outsourcing system.

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